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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.196 OF 2002

Digambar Iranna Majkure)
Age 19 years,)
R/o.Tapase Chawl, Room No.2)
Near Tambe School, Penkarpada)
Post : Mira, Dist. Thane)
(At present in Dhule Central Jail)).. APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT
(Through Kashimira Police Station))

Mr.Santosh Khale for the Appellant.

Mr.D.R. More, Additional Public Prosecutor,
for the Respondent.

**CORAM: V.G. PALSHIKAR, Acg. C.J. &
SMT.NISHITA MHATRE, J.**

DATED: 26TH SEPTEMBER 2006

ORAL JUDGMENT : (PER PALSHIKAR, Acg.C.J.)

. This Appeal is directed against the order of conviction recorded by Adhoc Additional Sessions Judge, Thane in Sessions Case No.376 of 2001 convicting the accused under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life.

2. Heard learned Counsel appearing on behalf of the Appellant and the learned Additional Public Prosecutor.

3. It is a peculiar case in which we need not go into the merits and facts of the case at all except for that is necessary for deciding the contentions raised by the learned Counsel.

4. The accused-present Appellant, was charged vide Exhibit 2 on 3rd November 2001 for having committed offence under Sections 376, 302 and 201 of the Indian Penal Code. The charge was explained to the accused who denied the same and claimed to be tried. The matter was thereafter posted for evidence.

5. On 22nd November 2001, the trial Judge recorded evidence of eight witnesses and the matter was adjourned to next date. On 23rd November 2001, the accused filed an application which is exhibited as Exhibit 31 by which he claimed legal aid as he was very poor and unable to meet the expenses of his lawyer earlier engaged by him. He pointed out in the application that though he had desired to be represented by his own Advocate engaged by him, by this application he expressed his inability to get himself effectively defended by making cross-examination of the witnesses and, therefore, prayed for grant of legal aid. His application was accompanied by the proforma application given by the District Legal Aid Authority, Thane. The learned Judge decided this application on the same day and rejected the request on the ground that earlier before commencement of the trial, the accused had opted for appointment of his own Advocate and, therefore, request on his part made on that day was liable to be rejected. According to the learned Counsel appearing on behalf of the Appellant, this order is unsustainable in law and is

squarely against the provisions of the Code of Criminal Procedure and the constitutional rights of the accused.

6. It is rather unfortunate that such a seasoned and experienced Sessions Judge was in blissful ignorance of statutory provisions contained in Section 304 of the Code of Criminal Procedure and the provisions of Article 21 and Article 39A of the Constitution of India. The right to life given by Article 21 is now interpreted to mean right to lead life as per the environment and status of the person on whom it is conferred. It is interpreted to mean opportunity to live which would include right to legal assistance and aid because without such a aid, a person without having means to engage a lawyer will be denied the right to live if he is denied the legal aid.

7. This aspect of the constitutional interpretation was given a place in the Constitution by the amendment effected in the year 1976 by which Article 39A was introduced. It provided that the State shall secure that the operation of the legal system promotes justice on the basis of equality and shall in particular provide free legal aid by suitable legislation or scheme.

8. It is in obedience to this mandate of the Constitution that the Maharashtra State Legal Aid and Services Authority has been established and which gives legal aid to all those who ask for it and even to those

who require legal aid but do not ask for it as it is a statutory right contained under Section 304 of the Code of Criminal Procedure.

9. This matter can be now conveniently disposed of by setting aside the order dated 23rd November 2001 passed by the Adhoc Additional Sessions Judge, Thane and remitted the matter back to the trial Court for fresh trial in accordance with law.

10. But, in our considered opinion, it is necessary to write a detailed order in this regard as a matter of guidance to the Fast Track Courts established by the Central Government. We are sitting on Criminal Appellate Jurisdiction for last about two months and even earlier thereto. The results given by Fast Track Courts are no doubt laudatory and praiseworthy. But it appears that in the zeal to decide the trial fast, statutory or constitutional provisions are also given a go bye by learned Judges like the one who passed this impugned order. We are certainly of the view that though the Fast Track Courts should act fast and justice should be delivered as quickly as possible, decision of a criminal trial cannot be speedily given at the cost of justice. To deny legal aid, though statutorily required to be provided and constitutionally mandated by the Constitution, would be certainly infringe the right guaranteed to every citizen by Article 21 of the Constitution of India. Such trampling of statutory and

constitutional rights should not take place at the hands of those who are responsible for administration of justice. We sincerely hope that while acting as Fast Track Courts or as part of administration of criminal justice, due urgency is achieved, but in so delivering justice at a fast pace, statutory provisions should not be trampled. The case in hand is an example of this type. The incident occurred on 28th May 2001 and the trial was over by 26th November 2001 i.e. exactly in a span of six months. Had the learned Judge granted adequate time and legal aid to the accused, may be the trial would have been over by the end of year 2001, whatever the result. Presently the accused is languishing in jail for last five years with a blatant illegality committed in his trial. In the event of the fresh trial ending in acquittal of the accused, valuable five years of the man would have been lost due to a mistake which could well have been avoided by a Judge of the experience and knowledge of the Presiding Officer.

11. There is no dispute that injustice is caused in this case. Equally disturbing is the fact that the accused was charged with a heinous offence of committing rape, sodomy and murder. The requirements of justice demand that such a trial should be expeditiously decided, but to decide it by ignoring the important provisions of law is not the remedy.

12. The accused is already in jail. We remit the

matter back to the trial Court i.e. District and Sessions Court, Thane, with a request to the learned Presiding Officer i.e. the Principal District Judge, Thane to allot the matter appropriately to a Fast Track Court with a direction to take care that the trial proceeds expeditiously without trampling any provisions of law. It would be desirable that the trial is finished as expeditiously as possible.

13. In the result, the Appeal succeeds and is allowed. The impugned judgment and order dated 26th November 2001 of the Adhoc Additional Sessions Judge, Thane in Sessions Case No.376 of 2001 is set aside. The matter is remitted back to the District and Sessions Court, Thane for further action in light of the observations made in the foregoing paragraphs.

14. We make it clear that the accused will continue in the custody and if any application for bail is made, it may be decided on merits of that application at that time. Till such application is made, he need not be released merely because the Appeal is allowed and the order of conviction is set aside.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)